

CG TO JUDGE KN

The Honorable Robert S. Lasnik  
United States District Court Judge

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SEP 28 2001 KN

CLERK U.S. DISTRICT COURT  
BY \_\_\_\_\_ WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DENNIS J. McKAY, PUANG M. McKAY;  
and MELANIE J. McCKAY,

Plaintiffs,

v.

CITY OF SEATTLE, NORM STAMPER,  
RICHARD SCHWEITZER; SERGEANT  
EAGLE; DOROTHY KIM; LAUREL  
WOLLBERG, JOHN EVENSON; VICTOR  
MAES, OFFICER NOLTIN, MARK SIDRAN,  
ANDREA CHIN; ANGELA RUSSO; JOHN  
DOES #1, and JOHN DOES #2,

Defendants.

NO. C01-1426L

ANSWER AND  
AFFIRMATIVE DEFENSES



CV 01-01426 #00000007

Comes now The City of Seattle, and on behalf of The City of Seattle Defendants,  
Norm Stamper, Richard Schweitzer, Sergeant Eagle, Dorothy Kim, Laurel Wollberg, John  
Evenson, Victor Maes, Officer Noltin, Mark Sidran, Andrea Chin and Angela Russo, and for  
answer to plaintiffs' Complaint for Damages, does hereby admit, deny, and allege as  
follows

ANSWER AND AFFIRMATIVE DEFENSES - 1

STAFFORD FREY COOPER  
Professional Corporation  
ATTORNEYS  
2500 RAINIER TOWER  
1301 FIFTH AVENUE  
SEATTLE, WASHINGTON 98101-2621  
TELEPHONE (206) 623-9900

1 I. Answering paragraph 1 of plaintiffs' Complaint, defendants lack sufficient  
2 information concerning the truth or falsity of the matters stated therein, and therefore deny  
3 same, except defendants believe that Dennis J McCoy may be a resident of Snohomish  
4 County

5 II. Answering paragraph 2 of plaintiffs' Complaint, defendants admit that The  
6 City of Seattle is a municipal corporation, and that The City of Seattle is located in King  
7 County, not Snohomish County as alleged.

8 III. Answering paragraph 3 of plaintiffs' Complaint, defendants admit that Norm  
9 Stamper is a retired Chief of Police, and that Lieutenant Richard Schweitzer, Sergeant  
10 Eagle, and Officers Kim, Wollberg, Evenson, Maes, and Noltin are and were police officers  
11 of the City of Seattle Police Department, and that, at all times relevant, defendants were  
12 acting within the course and scope of their employment as police officers for The City of  
13 Seattle.

14 IV Answering paragraph 4 of plaintiffs' Complaint, defendants admit that, at all  
15 times relevant, Mark Sidran was the City Attorney of The City of Seattle, that Andrea Chin  
16 and Angela Russo were Assistant City Attorneys, that all three acted within the course and  
17 scope of their respective duties, and that all three are entitled to absolute prosecutorial  
18 immunity.

19 V Answering paragraphs 5 and 6 of plaintiffs' Complaint, defendants deny  
20 same

21 VI. Answering paragraph 7 of plaintiffs' Complaint, defendants admit that  
22 jurisdiction and venue are proper in the United States District Court for the Western District  
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1 of Washington. Except as specifically admitted, all other allegations contained therein are  
2 denied.

3 VII Answering paragraph 8 of plaintiff's Complaint, defendants admit that Dennis  
4 McKay was arrested on November 2, 1998, that a criminal complaint was filed in the  
5 Seattle Municipal Court under Case No 342959, and that, following a jury trial in the  
6 Seattle Municipal Court, the jury returned a Not Guilty finding. Except as specifically  
7 admitted, all other allegations in said paragraph are denied.  
8

9 VIII. Answering paragraph 9 of plaintiffs' Complaint, defendants admit that, on or  
10 about November 2, 1998, plaintiff Dennis McKay was present in the Westlake area of the  
11 City of Seattle, and did engage in conduct which intentionally obstructed pedestrian and/or  
12 vehicle traffic in a public place, in violation of Seattle Municipal Code 12A.12 015(B)(1)  
13 Except as specifically admitted, all other allegations are denied.  
14

15 IX Answering paragraph 10 of plaintiffs' Complaint, defendants admit that, on  
16 several occasions, both Mr. McKay and Mr. McIntyre were asked by officers of the Seattle  
17 Police Department, including Lieutenant Schwertzer, to clear the intersection and to stop  
18 obstructing pedestrians and traffic, and were requested to move to other areas Both  
19 refused to do so. Except as specifically admitted, all other allegations are denied.  
20

21 X. Answering paragraph 11 of plaintiffs' Complaint, defendants admit that there  
22 was probable cause to arrest Mr. McKay and Mr. McIntyre for violation of Seattle Municipal  
23 Code 12A 12 015(B)(1) (Pedestrian Interference), and that both Mr. McKay and  
24 Mr McIntyre were so arrested Mr. McKay was placed under arrest by Officers Kim and  
25  
26

1 Wollberg, and transported by Officer Noltin. Mr. McKay was released at the West Precinct  
2 Except as specifically admitted, all other allegations are denied

3 XI. Answering paragraph 12 of plaintiffs' Complaint, defendants admit that  
4 Mr. McKay was arrested and was released at the West Precinct on November 2, 1998, and  
5 that certain items were placed into evidence. Except as specifically admitted, all other  
6 allegations are denied  
7

8 XII Answering paragraph 13 of plaintiffs' Complaint, defendants deny same

9 XIII Answering paragraph 14 of plaintiffs' Complaint, defendants admit that Officer  
10 Evenson prepared Incident Report No 98-464826, and that Officer Maes is listed a  
11 secondary officer, and that Lieutenant Schweitzer screened the arrest and signed the  
12 Incident Report as a reviewing supervisor. Except as specifically admitted, all other  
13 allegations are denied  
14

15 XIV. Answering paragraph 15 of plaintiffs' Complaint, defendants admit that a  
16 criminal complaint was filed in Seattle Municipal Court Cause No 342959 against  
17 Mr. McKay charging him with violation of Seattle Municipal Code 12A.12.015(B)(1)  
18 Defendants also admit that this complaint was prepared by an Assistant City of Seattle City  
19 Attorney. Except as specifically admitted, any other allegations are denied  
20

21 XV. Answering paragraph 16 of plaintiffs' Complaint, defendants admit that  
22 Mr. McKay was charged in Seattle Municipal Court under Cause No 342959; that a jury  
23 trial commenced on June 9, 1999, that on June 8, 1999, Mr. McKay's motion to dismiss the  
24 charges against him was denied; and that on June 9, 1999, at the conclusion of the  
25 prosecution's case in the Seattle Municipal Court, the motion of then-defendant McKay to  
26

1 dismiss charges against him was again denied Defendants admit that Seattle Municipal  
2 Court Judge Holfield presided, that Assistant City Attorney Angela Russo prosecuted, and  
3 that a jury returned a Not Guilty verdict on or about June 14, 1999. Except as specifically  
4 admitted, all other allegations are denied

5 XVI Answering paragraphs 17 and 18 of plaintiffs' Complaint, defendants deny  
6 same.  
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8 XVII Answering paragraph 19 of plaintiffs' Complaint, defendants admit that certain  
9 items of evidence were seized following Mr. McKay's arrest on November 2, 1998, but lack  
10 sufficient information concerning the truth or falsity of the allegations asserted therein, and  
11 therefore deny same

12 XVIII Answering paragraphs 20, 21, 22, 23, 24 and 25 of plaintiffs' Complaint,  
13 defendants deny same  
14

15 XIX Answering paragraph 26 of plaintiffs' Complaint, defendants admit that  
16 plaintiff Dennis J. McKay filed a Claim for Damages, but allege that he did not otherwise  
17 comply with RCW 4.96.020 in that he did not comply with the 60-day waiting period, and  
18 that plaintiffs Puang M McKay and Melanie J McKay did not comply with RCW 4 96.020.

19 FOR FURTHER ANSWER, AND BY WAY OF AFFIRMATIVE DEFENSES,  
20 defendants allege as follows.  
21

22 1. To the extent that plaintiffs' Complaint sets forth any State law tort claims,  
23 they are barred by plaintiffs' failure to comply with RCW 4.96 020.

24 2 Plaintiffs' Complaint is barred in whole or in part by operation of the applicable  
25 statute of limitations.  
26

1           3. Defendants Mark Sidran, Andrea Chin, and Angela Russo are entitled to  
2 absolute immunity, and dismissal of plaintiff's Complaint

3           4 Defendants Stamper, Schweitzer, Eagle, Kim, Wollberg, Evenson, Maes and  
4 Noltin are entitled to qualified immunity, and dismissal of plaintiffs' Complaint

5           5 At all times relevant herein, officers of the Seattle Police Department were  
6 acting properly, lawfully, with probable cause, and with a good faith belief in the existence  
7 of probable cause, and therefore are entitled to qualified immunity and dismissal of  
8 plaintiffs' Complaint.

9           6. Plaintiffs' Complaint fails to state a cause of action, in whole or in part, upon  
10 which relief can be granted

11           7 If plaintiff McKay sustained any damages, which are denied, then the same  
12 were proximately caused or contributed to be caused by his own conduct, which bars, in  
13 whole or in part, any claims herein.

14           8 There has been an insufficiency of service of process, and a lack of service of  
15 process, which bars plaintiffs' Complaint against the individually-named defendants, who  
16 are therefore entitled to dismissal.

17           9. Defendants reserve the right to assert such additional affirmative defenses as  
18 further discovery in this case reveal to be appropriate.

19           WHEREFORE, having fully answered plaintiffs' Complaint for Damages, defendants  
20 do hereby pray as follows:

21           1 That plaintiffs take nothing hereby,

22           2. That plaintiffs' Complaint be dismissed with prejudice,  
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3 That defendants be awarded judgment of dismissal herein;

4. That defendants be awarded their costs and disbursements incurred herein,  
including reasonable attorneys' fees, and

5. For such other and further relief as the Court deems just and equitable.

DATED this 28<sup>th</sup> day of September, 2001.

STAFFORD FREY COOPER  
*Professional Corporation*

By: 

Stephen P. Larson, WSBA #4959

Tobin E. Dale, WSBA #29595

Attorneys for Defendant City of Seattle and  
Individually-Listed Defendants Stamper,  
Schweitzer, Eagle, Kim, Wollberg, Evenson,  
Maes, Noltin, Sidran, Chin and Russo

**Certificate of Service**

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **ANSWER AND AFFIRMATIVE DEFENSES** on the following individuals:

**Richard L. Pope, Esq.**  
**2001 N.E. 177th Street**  
**Seattle, WA 98155**

*Attorney for Plaintiff*

☐ Via Facsimile  
☒ Via Mail  
☐ Via Messenger

DATED this 28<sup>th</sup> day of September, 2001, at Seattle, Washington

  
Sally Phillips